

111TH CONGRESS
1ST SESSION

S. 2804

To require employers to certify that they have not and will not lay off a large number of employees before they are allowed to employ foreign workers in the United States, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 19, 2009

Mr. SANDERS (for himself and Mr. GRASSLEY) introduced the following bill;
which was read twice and referred to the Committee on the Judiciary

A BILL

To require employers to certify that they have not and will not lay off a large number of employees before they are allowed to employ foreign workers in the United States, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Employ America Act”.

5 **SEC. 2. CERTIFICATION REQUIREMENT.**

6 (a) IN GENERAL.—The Secretary of Homeland Secu-
7 rity may not approve a petition by an employer for any
8 visa authorizing employment in the United States unless

1 the employer has provided written certification, under pen-
2 alty of perjury, to the Secretary of Labor that—

3 (1) the employer has not provided a notice of
4 a mass layoff pursuant to the Worker Adjustment
5 and Retraining Notification Act (29 U.S.C. 2101 et
6 seq.) during the 12-month period immediately pre-
7 ceding the date on which the alien is scheduled to
8 be hired; and

9 (2) the employer does not intend to provide a
10 notice of a mass layoff pursuant to such Act.

11 (b) EFFECT OF MASS LAYOFF.—If an employer pro-
12 vides a notice of a mass layoff pursuant to the Worker
13 Adjustment and Retraining Notification Act after the ap-
14 proval of a visa described in subsection (a), any visas ap-
15 proved during the most recent 12-month period for such
16 employer shall expire on the date that is 60 days after
17 the date on which such notice is provided. The expiration
18 of a visa under this subsection shall not be subject to judi-
19 cial review.

20 (c) NOTICE REQUIREMENT.—Upon receiving notifi-
21 cation of a mass layoff from an employer, the Secretary
22 of Homeland Security shall inform each employee whose
23 visa is scheduled to expire under subsection (b)—

1 (1) the date on which such individual will no
2 longer be authorized to work in the United States;
3 and

4 (2) the date on which such individual will be re-
5 quired to leave the United States unless the indi-
6 vidual is otherwise authorized to remain in the
7 United States.

8 (d) EXEMPTION.—An employer shall be exempt from
9 the requirements under this section if the employer pro-
10 vides written certification, under penalty of perjury, to the
11 Secretary of Labor that the total number of the employer’s
12 workers who are United States citizens and are working
13 in the United States have not been, and will not be, re-
14 duced as a result of a mass layoff described in subsection
15 (b).

16 **SEC. 3. RULEMAKING.**

17 Not later than 90 days after the date of the enact-
18 ment of this Act, the Secretary of Homeland Security and
19 the Secretary of Labor shall promulgate regulations to
20 carry out this Act, including a requirement that employers
21 provide notice to the Secretary of Homeland Security of
22 a mass layoff (as defined in section 2 of the Worker Ad-
23 justment and Retraining Notification Act (29 U.S.C.
24 2101)).

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